

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BANXCORP,
Plaintiff,
vs.
BANKRATE, INC.,
Defendant.

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. Case No. 07-cv-03398
.
. Newark, New Jersey
. January 28, 2011
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TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MADELINE COX ARLEO
UNITED STATES MAGISTRATE JUDGE

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1 And, Mr. Thompson, how much do you need to oppose
2 it.

3 MR. THOMPSON: Uh --

4 THE COURT: Three weeks?

5 MR. THOMPSON: Three -- three weeks.

6 THE COURT: So February 10th, one, two, three --
7 March 3rd?

8 MR. CANTER: And could we have --

9 THE COURT: March 10th reply.

10 MR. MEHL: That's fine.

11 MR. CANTER: Thank you, Your Honor. That's what I
12 was going to ask for.

13 THE COURT: We'll talk about it -- argument in a
14 minute.

15 Okay. Let's go on to the other issues.

16 MR. CANTER: Okay. So then, simultaneously with
17 that filing, Your Honor, we were going to withdraw without
18 prejudice the exclusive dealings claim because it will be
19 replead in our -- in our amended pleading. So hopefully that
20 will -- entire issue will be limited.

21 THE COURT: And that issue was related to some
22 discovery demands of -- of Bankrate?

23 MR. MEHL: No.

24 THE COURT: No?

25 MR. CANTER: No, Your Honor.

1 THE COURT: So you're just going to withdraw it
2 now?

3 MR. CANTER: Well, we were going to simultaneously
4 with the submission.

5 THE COURT: What if your motion -- okay. Okay.
6 What if your motion to amend is not granted? In other words,
7 usually -- is your -- you want to dismiss your pending -- one
8 of pending claims without prejudice? With prejudice?

9 MR. CANTER: Without prejudice, Your Honor.

10 THE COURT: Why don't you just wait to see if your
11 motion to amend is granted?

12 MR. CANTER: Fine. That's fine.

13 And then the next item we had --

14 THE COURT: And then you can decide at that point
15 if it's -- if the motion to amend is denied, you may -- may
16 want to -- may or may not want at that point dismiss the
17 claim you have as it is. I don't know.

18 MR. CANTER: Sure. That's fine, Your Honor.

19 THE COURT: But, Mr. Thompson, you seem confused?

20 MR. THOMPSON: Well, the -- the only thing is,
21 Your Honor, it's maybe form over substance, but they've
22 admitted they don't have a -- they don't have a good-faith
23 basis for the claim at this point. And so the reason -- the
24 whole -- the issue arose because we -- we served them with
25 notice that their motion --

1 THE COURT: Well, then, it's up -- then I'm not
2 getting involved. If you're going -- you want to dismiss it
3 right now?

4 MR. CANTER: Well, we were --

5 THE COURT: I mean --

6 MR. CANTER: We were just going to do it when we
7 file our amend- -- our motion for amended pleading,
8 Your Honor.

9 MR. MEHL: Or after --

10 MR. CANTER: Or after, like, you're -- your
11 suggestion about waiting till it's decided, Your Honor.

12 THE COURT: But let me just make a point. One
13 shouldn't depend on the other.

14 MR. CANTER: It should not.

15 THE COURT: It shouldn't depend. If you have a
16 claim that you can't support, you should dismiss it.

17 MR. CANTER: Well, the problem is, Your Honor, the
18 exclusive dealing claim is -- is -- it's an exclusive selling
19 claim in essence, so it's -- the -- we agree with counsel
20 that the exclusive dealing claim on a substantive basis on a
21 vertical level with the financial institutions being the
22 customers, is not what this -- the facts are revealing in
23 this case. That's not what it is.

24 The customers are indeed the banks. The
25 competitors are indeed the ones who are the 130 co-branding

1 partners. So there's an exclusive horizontal relationship
2 with these horz- -- are these competitors, and that's why we
3 wanted to wait until ultimately -- it's -- it's going to be
4 replead, Your Honor, in a different context in terms of
5 market allocation under -- under the Sherman Act § 1. But in
6 terms of form over substance, it's -- we don't disagree with
7 counsel on this issue. So ...

8 THE COURT: Okay. Then dismiss it.

9 MR. CANTER: So it's -- we could do it without
10 prejudice. We would prefer to do it when we submit the
11 motion at the same time, but however Your Honor wants --

12 THE COURT: However you want to do it. It's your
13 case. Not mine.

14 MR. CANTER: We would -- we would, then, adopt
15 Your Honor's suggestion of waiting until it's decided.

16 THE COURT: But you do it at your own -- I mean,
17 listen, this is like a circular argument.

18 MR. CANTER: Okay.

19 THE COURT: They're at -- Mr. Thompson doesn't have
20 to speak. He's going to say you're repleading an entire new
21 theory. And it's not the same thing. And you're -- you're
22 being -- you're -- it's a new claim.

23 MR. CANTER: If it's withdrawn, Your Honor, without
24 prejudice.

25 THE COURT: So what he's saying is the one you have

1 THE COURT: Would you be willing to clarify that?

2 MR. MEHL: Of course. Especially for the -- we're
3 not claiming that it's the price fixing that drove us out of
4 the market. It's the predatory pricing that drove us out.

5 THE COURT: Isn't that the same thing? When you
6 say predatory pricing --

7 MR. MEHL: It's not the same thing.

8 THE COURT: Tell me how it's different.

9 MR. MEHL: Actually --

10 THE COURT: Tell me how it's different.

11 MR. MEHL: I'll explain. What we're claiming is
12 that they used price fixing to lower the price first. We're
13 not claiming that they drove us out of the market by raising
14 the price. They drove us out of the market by lowering the
15 price. Below cost. For years. Until they drove us out of
16 the market, and that's actually predatory pricing as well.
17 They continued to raise the prices after they drove everybody
18 out of the market to recoup the prior losses. They had
19 losses of more than \$53 million. It's in all of their 10-Ks.

20 THE COURT: Any reason why it's not in this answer?

21 MR. MEHL: I'm sorry?

22 THE COURT: Any reason why that's not in this
23 answer?

24 MR. MEHL: I believe it is.

25 THE COURT: Where? Show me where it is.

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